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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,766	08/22/2003	Wanthida Kentner		8051

7590 04/05/2006

Wanthida & Robert S. Kentner
289 South Furlong Drive
Lafayette, IN 47905

EXAMINER

BALDWIN, GORDON

ART UNIT PAPER NUMBER

1775

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/645,766

Applicant(s)

KENTNER ET AL.

Examiner

Gordon R. Baldwin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 & 2 is/are pending in the application.
- 4a) Of the above claim(s) 2 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

The correspondence sent on 11/08/2005 regarding a restriction requirement of applicant's invention is vacated, in lieu of the current correspondence addressing the restriction requirement and the first office action.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claim 1, is drawn to a product, classified in class 428, subclass 24.
- II. Claim 2, drawn to processes of manufacture, classified in class 140, subclass 92.3

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the article, of invention I, can be made by a different process not requiring bended wires running from the base of the loop to any other part of the loop inside the loop to provide support for the upper layer of the fabric and/or the separation from the lower layer, and also to create cavity formation inside the loop.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Robert Kentner on 3/14/2006 a provisional election was made without traverse to prosecute invention I, claim 1. Affirmation of this election must be made by applicant in replying to this Office action. Claim 2 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Young (Pat. No. 4,708,892).

Consider claim 1, Young teaches an artificial flower (10) that contains a plurality of flexible frames (12) formed from flexible light weight strand like wires bent over to make loops (14). A plurality of elastic knitted fabric material pieces (16) are each

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formed from texturized synthetic yarns tautly stretched over each of the loops (14) to cover the loops thus making a plurality of petals in a cluster. (Col. 1, lines 55-64) The fabric used by Young is fabricated out a nylon, which is considered to be a synthetic fabric. (Col. 2 lines 3-5)

As for the transparent or multi-colored combinations of the fabric, according to *In re Seid*, 161 F. 2d 229, 73 USPQ 431 (CCPA 1947), the court found that matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. The use of a variety of colors or a transparent versions of a synthetic fabric is not considered to be given a mechanical function in the claims of the applicant and is considered to be only ornamental purposes and is therefore not considered to be patentably distinguishable.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Bouillot (Pat. No. 3,822,171)

Consider claim 1, Bouillot teaches an artificial flower petal with a deformable support which is easily deformable yet is strong enough to maintain the deformed shape. (Col. 2 lines 41-45) The support material may be a thin wire of any suitable ductile material such as annealed iron and may be coated or uncoated with a protective varnish. (Col. 2 lines 45-48) The covering one the wire or strand element preferably is similar to the final color of the covering material. (Col. 2 lines 48-50) The covering material (4) may be any suitable stretchable material, i.e. a woven or knit synthetic material which is sufficiently extensible or elastic so that it conformed to the shape of the loop (2). Although the preferred stretchable materials are circular knits of various

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synthetic yarns which have been texturized by false twisting and covering material (4), which is sufficiently elastic or stretchable so that it conforms to the dimensions of the support loop may be utilized. (Col. 2 lines 50-60) Additionally, Bouillot teaches that the covering material (4) is stretched over a wire loop (2) is firmly held in place by a binding material (5) which may be any adhesive material. (Col. 2 lines 60-65)

As for the transparent or multi-colored combinations of the fabric, according to *In re Seid*, 161 F. 2d 229, 73 USPQ 431 (CCPA 1947), the court found that matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. The use of a variety of colors or a transparent versions of a synthetic fabric is not considered to be given a mechanical function in the claims of the applicant and is considered to be only ornamental purposes and is therefore not considered to be patentably distinguishable.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gordon R. Baldwin whose telephone number is (571)272-5166. The examiner can normally be reached on M-F 7:45-5:15.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on 571-272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GRB


JENNIFER C. MCNEIL
SUPERVISORY PATENT EXAMINER
3/29/06